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80-1567

No._____

In The

SUPREME COURT OF THE UNITED STATES

January Term

1981

ARVIND J. MADHANI, M.D.,

Petitioner-Defendant

vs.

MT. VERNON AVIATION

Respondent-Plaintiff

PETITION FOR WRIT OF CERTIORARI FROM
THE MICHIGAN COURT OF APPEALS

Arvind J. Madhani, M.D.
121 Brady Street
Sault Ste. Marie,
Michigan 49783

*DEFENDANT*

## QUESTIONS PRESENTED FOR REVIEW

I. The Illinois Trial Court erred in not dismissing the plaintiff for violation of Amendment Six of the U.S. Constitution because said violations were caused by Mt. Vernon Aviation's gross negligence.

II. The Illinois Trial Court erred in not notifying the Defendant in a timely and orderly fashion of the date of the trial.

III.The Michigan Trial Court erred in not dismissing plaintiff's claim to a foreign judgement because of Illinois's violation of Amendment Seven of the U.S. Constitution, and plaintiff's violation of Amendment Six of the U.S. Constitution, and said violations were caused by their gross negligence.

IV. The Michigan Trial Court erred when not allowing the Defendant to testify on his behalf and to explain his circumstances, as required by Amendment Six of the U.S. Constitution.

V. The Full Faith and Credit Clause of the U.S. Constitution cannot be used as an instrument for extracting money from a U.S. citizen when such an act is done unfairly and done only for the plaintiff's material benefit.

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# TABLE OF AUTHORITIES

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69 ALR 295, 201 Wis 565, 230 NW 618

29 Degree of care.
(For text discussion, see Am Jur Aviation, 28)

It is not the duty of an aviator to use the highest degree of care that men of reasonable vigilance or foresight ordinarily exercise in the operation of a plane in making a landing on a runway in an airport, but he is bound only to use ordinary care.

(Annotated)

No.____

In The
SUPREME COURT OF THE UNITED STATES
January Term
1981

ARVIND J. MADHANI, M.D.
Petitioner-Defendant

vs.

MT. VERNON AVIATION
Respondent-Plaintiff

# PETITION FOR WRIT OF CERTIORARI FROM THE MICHIGAN COURT OF APPEALS

Arvind J. Madhani, M.D., surgeon, of 121 Brady Street, Sault Ste. Marie, Michigan, respectfully prays that a Writ of Certiorari issue to review the judgement and opinion of the Michigan Court of Appeals.

## JURISDICTION

The Judgement of the Michigan Court of Appeals was entered and a timely Motion for a review by the Michigan Supreme Court was denied. Jurisdiction of this Court is invoked under Article 3, Section 2 of the United States Constitution.

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## STATUTES AND RULES INVOLVED

AMENDMENT SIX: U.S. CONSTITUTION

In all cases the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and and district wherein the crime shall have been committed, which district shall have been previously ascertained by law and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor and to have the assistance of counsel for his defense.

AMENDMENT SEVEN: U.S. CONSTITUTION

In suits at common law, where the value in controversy hall exceed twenty dollars, right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

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## STATEMENT OF CASE

On March 29, 1973, Summons was issued out of the Jefferson County Illinois Circuit Court on the Plaintiff's claim for damages based on negligence. Defendant, then living in Pennsylvania, was served with a copy of that Summons and the accompanying Petition on April 2, 1973. Defendant responded by a letter to the Court, setting forth what he believed to be his defense or defenses to that action, but the letter was apparantly not recognized by the Court, and hearing on the action was scheduled without notice to the Defendant. Judgement was rendered against him in the sum of $3,958.35 on August 10, 1973.

Therefore, on October 11, 1977, suit was commenced in the 91st District Court of this County and State, on the Illinois Judgement, under MCL 691.1151 and Article IV, Section 1, United States Constitution (Full Faith and Credit).

Thereafter, on August 21,1978, an appeal from the District was commenced in the Circuit Court of Chippewa County in the State of Michigan.

Thereafter, a timely appeal was commenced in the State of Michigan Court of Appeals.

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## ARGUMENT

## QUESTION ONE

In the first questions presented, the Petitioner contends that the Illinois trial court erred in not dismissing the plaintiff for not bringing this matter to court in a speedy and orderly fashion.

The Petitioner, who is a highly trained surgeon, when residing in Mt. Vernon, Illinois use to rent and fly airplanes so as to practice medicine in small rural communities which needed medical care.

On one particular day the plane which the Petitioner was flying sustained a flat tire. Since the Petitioner had insurance on the aircraft the matter was considered to be closed. The Illinois trial court is foolish to have considered the charge of negligence by the plaintiff since the Petitioner was a fully certified pilot. The Illinois trial court should have realized that no one would jeapordize their own life by flying negligently, especially when landing. Any pilot knows that landing is the most difficult part of flying and there is not a certified pilot who will claim that his full concentration was not devoted to that segment of flying.

The Illinois trial court should also have realized that there is no such thing as negligence Gruenke v. North American Airways Co. 69 ALR 295, 201 Wis 565, 230 NW 618. It is on these grounds that the court should have dismissed the plaintiff.

If Mt. Vernon Aviation felt that the Petitioner could not fly planes then why did they allow him to fly their aircraft for many more hours, and why did they wait 3 years to file a suit when the

Petitioner had moved some 700 miles away to Pennsylvania.

The Petitioner therefore claims that the Illinois Trial Court erred in not dismissing the plaintiff on the grounds that the plaintiff was grossly negligent in the manner of which the incident was handled.

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## ARGUMENT

## QUESTION TWO

The Petitioner also claims that the Illinois Trial Court erred in not notifying him of the date of the trial.

When the Petitioner received a summons that he either answer or appear, the Petitioner answered the best way he knew how, which was a letter. After he had sent the letter there was no answer from the court, so the Petitioner assumed that the matter had come to an end. However, to the Petioner's dismay and some four (4) years later the Petitioner came to learn that a default judgement was rendered against him.

How could the Petitioner defend himself if he was never given the date of the trial?

Amendment Seven of the U.S. Constitution clearly states:

> "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any court of the United States, than according to the rules of the common law."

The record clearly shows that the Petitioner was denied his Constitutional Right to trial by jury. This right has been expressly stated in what is known as the Bill of Rights.

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## ARGUMENT

## QUESTION THREE

The Petitioner claims that the Michigan Trial Court erred in not dismissing Plaintiff's claim to a ~~foreing~~ foreign judgement on the grounds that Illinois violated defendant's right to trial by jury and Plaintiff had no valid claim to aircraft negligence, since no such thing exists and there was never any testimony or

evidence ever presented in a United States Court of Law which proved beyond a reasonable doubt that there was negligence. The Petitioner was never given the right to counsel during the trial, or allowed to call witnesses on his behalf, or be confronted by witnesses against him. All these rights are expressly granted in the Constitution of the United States and all these rights have been denied ~~by~~ to the Petitioner.

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## ARGUMENT

## QUESTION FOUR

The Petitioner contends that the Michigan Trial Court erred when the court did not allow him to testify on his behalf.

Amendment Six of the U.S. Constitution specifically states that a person shall have the right to have a compulsory process for obtaining witnesses in his favor.

Who can be a better witness in explaining the Petitioner's circumstances than the Petitioner himself. By not allowing the Petitioner to testify very important testimony and information was not presented to the court.

Such testimony would have shown that the charges by Mt. Vernon Aviation were "phony" and that they should not have entered in any court of Law. The Michigan trial court therefore erred in not allowing the Petitioner to testify on his behalf.

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## ARGUMENT

## QUESTION FIVE

The Petitioner contends that the Full Faith and Credit Clause of the United States Constitution is being used as an instrument for extracting money from the Petitioner for the Plaintiff's material benefit.

If the Plaintiff really felt that the Petitioner were negligent in flying aircraft they would not have allowed the Petitioner to have flown for many more hours after the incident. Also, if they felt they had a strong case, why did they wait so many years to file suit. It seems that since students were the only ones who rented their planes and the Petitioner was a doctor, that the Plaintiff felt that the Petitioner was the only one they could

extract money from, especially since the Petitioner had moved many miles away they were probably expecting a settlement.

If the Plaintiff really believed that the Petitioner was a negligent pilot and still allowed him to fly, then it really is Mt. Vernon Aviation that is guilty of negligence. If they really feel that the Petitioner is not a competant flyer, and still allowed him to fly, then they purposely and for reasons they only know, jeapordized the Petitioner's life and countless others.

It is a real shame that one of the most sacred documents in the United States history is being used by a group of individuals for the purpose of material benefit.

## CONCLUSION

Petitioners judgement must be reversed and his money returned due to the complete disregard for the due process of law. It is quite clear that there were gross errors made by the trial courts, and certainly the Plaintiff's motives for the suit are very questionable. The judicial system cannot deny certain basic rights that are granted to a citizen through a Constitution in the form of the Bill of Rights. If even one of these rights is allowed to crumble, and the very foundation of our Constitution will crumble, and soon we will find that there is no law at all; therefore, Petitioner respectfully prays that a Writ of Certiorari be issued to review the judgement.

Respectfully Submitted,

ARVIND J. MADHANI, M.D.
121 Brady Street
Sault Ste. Marie,
Michigan 49783

Dated: 1/23/81

APP.1

APPENDIX

EXHIBIT A

AT A SESSION OF THE SUPREME COURT
OF THE
STATE OF MICHIGAN

Held at the Supreme Court Room in the city of Lansing, on the 9th day of September in the year of our Lord one thousand nine hundred and eighty.

Present the Honorable
MARY S. COLEMAN,
Chief Justice,
THOMAS GILES KAVANAUGH,
G. MENNAN WILLIAMS,
CHARLES L. LEVIN,
JOHN W. FITZGERALD,
JAMES L. RYAN,
BLAIR MOODY, JR.
Associate Justices

CR 29-436

MT. VERNON AVIATION,
Plaintiff-Appellee,

v

ARVIND J. MADHANI, M.D.,
Defendant-Appellant.

SC: 65008
COA: 78-3844
LC: 78-2357-AU

APP.2

ORDER

On order of the Court, the application in propria persona for leave to appeal is considered, and it is DENIED, because the Court is not persuaded that the questions presented should be reviewed by this Court.

STATE OF MICHIGAN --ss.

I, Harold Hoag, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is true and correct copy of an order entered in said court in said cause; that I have compared the same with the original and that is a true transcript therefrom, and the whole of said original order.

In TESTIMONY WHEREOF, I have hereto set my hand and affixed seal of ~~said~~ said Supreme Court at Lansing, this 9th day of September in the year of our Lord one thousand nine hundred and eighty.

*CARLIN R. DANIS* Clerk

*Deputy*

*REVIEW IN DECEMBER 1980 WAS DENIED.*

STATE OF MICHIGAN

COURT OF APPEALS

APR 7 1980

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MT. VERNON AVIATION COMPANY

Plaintiff-Appellee,

v No.78-3844

ARVIND J. MADHANI, M.D.,

Defendant-Appellant.

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BEFORE: Kaufman, P.J., and D.E. Holbrook, Jr. and R.M. Maher, JJ.

PER CURIAN

Defendant appeals a Chippewa County Circuit Court order denying his appeal of a district court order granting plaintiff summary judgement. Defendant's motion for delayed appeal to this court was granted January 5, 1979.

The original action was filed in circuit court in Jefferson County, Illinois on March 29, 1973. The complaint alleged that defendant had negligently caused damage to plaintiff's airplane while he was a resident of Pennsylvania. Subsequently defendant wrote a letter to the Jefferson County Circuit Court which was not recognized by the Illinois court as an answer or an appearance. On August 9, 1973 default judgement was entered against

defendant for the sum of $3,958.

On October 11, 1977 a complaint on this sworn judgment was filed in Michigan's 91st District Court. On February 14, 1978 summary judgment was granted to plaintiff. Defendant appealed to the Chippewa County Circuit Court which denied the appeal in a written opinion dated August 23, 1978.

The issue on appeal is whether the trial court reversibly erred in not allowing defendant to present proofs concerning the letter he wrote to the Illinois court which he claims was an answer to the complaint.

Since no issue is raised as to the propriety of the Illinois court jurisdiction, the judgment should be given full faith and credit. Stewart v Eaton, 287 Mich 466; 283 NW 651 (1939).

In a somewhat similar factual situation presented in Northern Ohio Bank v Ket Associates, Inc., 74 Mich App 286, 253 NW2d 734 (1977), this Court held that a judgment entered in Ohio may be attacked in Michigan on the grounds of a lack of personal or subject matter jurisdiction.

The Court specifically held that a defendant in Michigan should be allowed to amend his answer prior to summary judgment. Thus, Northern Ohio Bank, supra, is limited to allowing a defendant to amend his pleadings prior to summary judgment and is radically different from the instant case.

Since it is apparant that the Illinois court did not construe defendant's letter as an answer, a court sitting in Michigan should not disregard this factual finding. In re Elliott's, 285 Mich 579; 281 NW 330 (1938). The Illinois Circuit Court in its written opinion apparantly takes the position that defendant's letter was not an answer. No issue is raised as to the propriety of the summons and complaint.

The Illinois court had proper jurisdiction. Hence its factual findings should not be collaterally attacked and should be given full faith and credit in Michigan.

Affirmed.

STATE OF MICHIGAN

COURT OF APPEALS

APR 7 1980

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MT. VERNON AVIATION COMPANY,

Plaintiff-Appellee,

v No. 78-3844

ARVIND J. MADHANI, M.D.,

Defendant-Appellant.

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BEFORE: Kaufman, P.J., and D.E. Holbrook, Jr. and R.M. Maher, JJ.

PER CURIAM

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Since it is apparent that the Illinois court did not construe defendant's letter as an answer, a court sitting in Michigan should not disregard this factual finding. In re Elliott's Estate, 285 Mich 579; 281 NW 330 (1938). The Illinois Circuit Court in its written opinion apparently takes the position that defendant's letter was not an answer. No issue is raised as to the propriety of the summons and complaint.

The Illinois court had proper jurisdiction. Hence its factual findings should not be collaterally attacked and it should be given full faith and credit in Michigan.

Affirmed.

AT A SESSION OF THE SUPREME COURT OF THE STATE OF MICHIGAN, Held at the Supreme Court Room, in the City of Lansing, on the 3rd day of December in the year of our Lord one thousand nine hundred and eighty

Present the Honorable

MARY S. COLEMAN,
Chief Justice,

THOMAS GILES KAVANAGH,
G. MENNEN WILLIAMS,
CHARLES L. LEVIN,
JOHN W. FITZGERALD,
JAMES L. RYAN,
BLAIR MOODY, JR.
Associate Justices

CR 29-436a

MT. VERNON AVIATION,

Plaintiff-Appellee,

v

SC: 65008
COA: 78-3844
LC: 78-3357-AU

ARVIND J. MADHANI, M.D.,

Defendant-Appellant.

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On order of the Court, the motion by defendant-appellant for reconsideration of this Court's order of September 9, 1980, is considered, and the motion is DENIED, because it does not appear that said order was entered erroneously.

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STATE OF MICHIGAN — ss

I, Harold Hoag, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause, that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 3rd day of December in the year of our Lord one thousand nine hundred and eighty

Corbin R. Davis
Deputy
Clerk